Written Comments of RENEW
225 CMR 14.00 – Renewable Energy Portfolio Standard – RPS I
Emergency Regulations
Provided to the Massachusetts Department of Energy Resources

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Introduction

RENEW thanks the Department of Energy Resources ("DOER") for the opportunity to provide comments on the proposed RPS I Emergency Regulations. RENEW is a coalition of renewable energy companies and environmental non-profit organizations seeking to promote legislation, policies, and practices that encourage renewable energy generation across New England. A list of RENEW members is attached to this document. The views found in these comments may not reflect the specific perspective of the individual companies, but are consistent with RENEW's general mission to promote effective renewable energy regulatory policy.

Issues

RENEW commends DOER for its work in crafting the Emergency Regulations and has recommendations on two issues that are key for our membership and for ensuring future investments in Massachusetts renewable energy market.

1. Capacity Requirements
2. Netting Provisions

RENEW also provides comments on two issues related to biomass eligibility:

1. Eligibility of High-Btu Landfill Gas conveyed through a common carrier of natural gas
2. Combustion of eligible biomass fuels in stokers

A number of RENEW members have commented on these issues previously at DOER's public hearings and through written comments.

Capacity Requirements

According to the proposed Emergency Regulations, external intermittent resources would be required to delist a portion of their capacity, equal to their renewable energy credit ("REC") sales to Massachusetts, in order to qualify those RECs for the Massachusetts RPS. This provision applies to both existing external intermittent generators and new external intermittent generators.

> The amount of the generation capacity of the Generation Unit whose electrical energy output is claimed as RPS Class I Renewable Generation shall not be committed to any Control area other than the ISO-NE Control Area… (225 CMR 14.05(e)(1))

RENEW provides the following recommendations to the proposed capacity requirements:

1. External intermittent generators with a statement of qualification prior to July 2, 2009 should be exempted from the rulemaking's capacity obligations.

2. DOER should provide further guidance on how capacity delisting would occur in Quebec and Maritime provinces. If DOER cannot determine that capacity delisting in those jurisdictions can achieve the same level of capacity price transparency as the NYISO it should consider eliminating the delisting provision for external intermittent resources.

Exempting certain external intermittent generators from the capacity requirements:

RENEW believes this provision unfairly disadvantages external intermittent generators that have received a statement of qualification (SOQ) prior to July 2, 2008 since those generators economics were based on existing DOER rules which allowed them to capture capacity revenue from their originating control areas. This revenue was factored into the price of energy and RECs necessary to achieve project finance. Many of these generators have existing financial obligations that will make them unable to recapture lost capacity market revenue in either the energy or REC market. Additionally, as DOER determined, it is unfeasible for external intermittent generators to engage in the ISO-NE capacity market, therefore, participating in the ISO-NE capacity market is not a feasible avenue for external intermittent generators to recapture lost revenue resulting from these proposed regulations.

Recommendation: RENEW recommends applying the provision in 14.05(e)(2) that exempts generation units from compliance with that section to the capacity requirements in total. 14.05(e) should be redrafted to read as follows:

(e) Capacity Obligation. The Generation Unit's generating capacity obligation is subject to the following obligations <u>except the requirements of this section do not apply to Generation Units for which DOER has received an administratively complete Statement of Qualification Application prior to July 2, 2008.</u>

Ensuring consistency across control areas for external intermittent generators subject to capacity delisting:

RENEW is concerned that the capacity obligation imposed on external intermittent generators by the proposed Emergency Regulations may unfairly impact resources located in NYISO compared to resources located in either the Maritimes Control Area (Maritimes) or Quebec.

ISO-NE and the NYISO both have similar capacity markets. Each requires a forward commitment and has a capacity price separate from energy that allows market participants to identify the value of providing capacity to the control area. Neither the Maritimes nor Quebec has a forward capacity market nor do these control areas have a differentiated, transparent price for capacity.

The Maritimes Control Area includes a portion of Northern Maine, New Brunswick, Nova Scotia, and PEI. From our understanding there is no stand alone value for capacity. Rather LSE's must demonstrate to the power pool managers that they have capacity sufficient to meet their forecasted peak load (resource adequacy) plus a reserve (safety) margin.

Quebec is a vertically integrated regulated utility-based market. Quebec requires a structure similar to the Maritimes whereby the LSE must document sufficient capacity to the provincial entity.

This creates some challenges for the application of 14.05(e)(2) as proposed. In order to ensure that resources in the NYISO – with its forward market and capacity price transparency – are treated similarly to resources in the Maritimes and Quebec, DOER will need to ensure that those control areas do not count the portion of capacity providing RECs to Massachusetts in their resource adequacy calculations. Additionally, there would need to be some forfeiture of revenue equal to the value of that capacity.

RENEW is not thoroughly familiar with how the Maritimes or Quebec price capacity, but our current understanding is that capacity is bundled with energy in confidential bilateral contracts between generation and the LSE and hence presents many challenges to DOER in enforcement and determination of the capacity value.

Recommendation: Should DOER choose to move forward with 14.05(e)(2) as written, RENEW suggests that DOER provide either further regulations or policy statements on how it will ensure that "delisted" capacity in the Maritimes and Quebec is accounted for and priced. Specifically, to properly "delist" a resource in the Maritimes or Quebec it is essential that those resources, for example, not count towards those control areas reserve margins and those resources should forfeit some portion of their revenues equal to their capacity value. It is conceivable that written assurances with the management of the control areas of the

Maritimes and Quebec will be necessary to provide assurance for all market participants that external intermittent generators in all adjacent control areas are being treated equally. Should DOER determine that consistent treatment for delisting across adjacent control areas is impossible, DOER should eliminate the delisting requirement for external intermittent generators.

Netting Provisions

The Imports Feasibility Study highlighted that the purpose of Section 105 of the Green Communities Act was to prevent "greenwashing" or "roundtripping," defined as "…the process of importing renewable energy into ISO-NE to create RECs and then exporting that energy or a similar amount of energy out of ISO-NE. The review of the netting requirement led to the conclusion that implementation would be difficult and best achieved by self-attestation of participants that they would not engage in greenwashing.

However, the language in the Emergency Regulations could be read to apply to transactions that go beyond greenwashing and, as such, we recommend that clarifications be made to the relevant section – 14.05(5)(d) – in order to clarify DOER's intent. Additionally, we believe the inclusion of the term "affiliate" is too broad and is inconsistent with the intent to address greenwashing and, therefore, should be eliminated:

We suggest the following changes to the section:

(d) The Generation Unit Owner or Operator must provide an attestation in a form to be provided by the Department that it will not itself ~~or through an affiliate or other contracted party,~~ engage in the process of intentionally "greenwashing" whereby ~~of importing~~ RPS Class I Renewable Generation is imported into the ISO-NE Control Area for the creation of RPS Class I Renewable GIS Certificates, and then simultaneously export the same ~~an~~ exact amount of energy ~~or a similar quantity of other energy~~ out of the ISO-NE Control Area during the same hour. The provisions of this section shall not apply to energy transactions that are unrelated to imports for the purpose of creating Class I Renewable GIS Certificates.

Biomass Eligibility

High-Btu landfill gas conveyed through a common carrier: Section 14.02(5) provides RPS I eligibility for landfill methane gas that is transported to a generation unit through a common carrier:

> 5. Landfill methane gas, provided that such gas is collected and conveyed directly to the Generation Unit without the use of facilities as used a common carriers of natural gas, except that such landfill gas may be

> extracted from a landfill entirely within the ISO-NE Control Area or an adjacent Control Area and transported to a Generation Unit within one of those Control Areas via a common carrier of natural gas, subject to documentation satisfactory to the Department of the gas transportation and related contracts.
>
> 6. The differentiation between a generating unit and fuel in THE CASE OF LANDFILL GAS is vital. Enabling an existing gas plant to qualify for RPS I by using landfill gas transported through a common carrier does not encourage the development of new renewable resources. Instead it provides rents to existing GAS facilities that have simply entered into a contract to purchase landfill gas through the commodity pipeline.

RENEW agrees with the comments of the Conservation Law Foundation ("CLF") provided to DOER on October 31, 2008 regarding this matter. To review, RENEW agrees with CLF's general point that the RPS statute, as enacted by the General Court, does not provide for RPS I eligibility for landfill gas conveyed to a generating unit through a common carrier. To specifically reference CLF's comments in this regard:

> In short, the language of the RPS statute is clear with respect to RPS Class I eligibility only for new (post-1997) LFG *generating units* – not landfill gas *fuel* used in other contexts.
>
> It is therefore appropriate, and consistent with the statute, that the existing regulations allow RPS eligibility for LFG only where the electrical output is produced by an LFG generating unit – i.e., a generating unit on-site or closely integrated with a landfill from which the gas is extracted and converted to electricity.

The differentiation between a *generating unit* and *fuel* in this instance is vital. Enabling an existing gas plant to qualify for RPS I by using landfill gas transported through a common carrier does not encourage the development of new renewable resources. Instead it provides rents to existing facilities that have simply entered into a contract to purchase landfill gas through the commodity pipeline.

Conclusion

RENEW thanks DOER for the opportunity to provide these comments. The provided recommendations will encourage additional renewable energy development in New England by enhancing financial and transaction certainty for market participants. We would be pleased to discuss these comments and recommendations further in the appropriate forum.